The Examiner has required restriction among the following groups of claims:

Group I. - Claims 1 to 7, which are directed to a transdermal patch;

Group II. - Claims 8 to 14, which are directed to a method of making transdermal patch; and

Group III. - Claims 15 to 26, which are directed to a method of treating a person for nicotine dependence.

The basis for the Examiner's Requirement for Restriction is that she considers the three groups of claims to define distinct inventions.

It is submitted respectfully that the Examiner's Requirement is deficient on its face because 35 U.S.C. § 121 requires that the involved inventions be also independent. Clearly, the inventions defined in the Claims of Groups I., II., and III. are not independent in that the article defined in the article claims can be made by the method defined in method Claims 8 to 14 and can be used in the method defined in method Claims 15 to 26. The Examiner has recognized apparently that the claim groups do not define independent inventions because she has not characterized them as being independent. Moreover, the Examiner has not even attempted in her Action to explain why she considers the claims to be directed to independent inventions. Consequently, the Examiner has issued a Requirement that is deficient on its face because she has not explained why the three claim groups are considered to define independent subject matter. Accordingly, the Requirement should be withdrawn.

There are still additional reasons why the Examiner has issued a Requirement that is deficient on its face. In each of Paragraphs 2. 3. and 4. of the Requirement, the Examiner acknowledges that distinctness of inventions exists if it can be shown that the involved product can be made by a materially different process or used in a materially different process. The Examiner's Requirement does not in any way address "materially different process" which the Examiner herself states is an essential element that is required for a showing of the distinctness of the inventions. These are additional reasons as to why the Examiner's Requirement is not justified and should be withdrawn.

It is submitted further that the Examiner's Requirement should be withdrawn because it is believed that a proper search of the subject matter of each claim group cannot be done except that such a search is conducted for the subject matter of all three groups of claims. This is so because the subject matter of the claims is so interrelated.

Applicant elects provisionally to prosecute the claims of Group I. (Claims 1 to 7), which define a transdermal patch.

With regard to the Examiner's requirement that applicant elect a species to which generic Claim 1 would be limited if it is not found allowable, applicant elects the species comprising the combination of mecamylamine and nicotine.

A Petition for an extension is submitted herewith.

Respectfully submitted,
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Date

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